

CHAPTER 5

JUDGES

ARTICLE 1

DISCIPLINE PROCEDURES FOR JUDGES

Section.

- 5-101. Governing law.
- 5-102. Proceedings not substitute for appeal.
- 5-103. Informal inquiry.
- 5-104. Preliminary investigation; closed formal hearing.
- 5-105. Formal hearing.
- 5-106. Answer.
- 5-107. Setting for hearing and appointment of master.
- 5-108. Hearing.
- 5-109. Issuance, service, and return of subpoenas.
- 5-110. Amendments of complaint or answer.
- 5-111. Report of master.
- 5-112. Objections to report of master.
- 5-113. Appearance before commission.
- 5-114. Extension of time.
- 5-115. Commission decision.
- 5-116. Certification of commission recommendation to Supreme Court.
- 5-117. Review procedure in Supreme Court.
- 5-118. Decision by the Supreme Court.
- 5-119. Fees and expenses.
- 5-120. Judicial retirement for disability.
- 5-121. Confidentiality.
- 5-122. Claims of discrimination.
- 5-123. Complaint; filing instructions; form.

§ 5-101. Governing law.

The Commission on Judicial Qualifications and any Masters duly appointed, shall follow the constitutional provisions for said commission and the statutes contained in Chapter 24, Article (7) as well as the rules hereinafter set forth.

§ 5-102. Proceedings not substitute for appeal.

In the absence of fraud, corrupt motive or bad faith, the commission shall not take action against a judge or justice for making findings of fact, reaching a legal conclusion or applying the law as he or she understands it. Claims of error shall be left to the appellate process. (Source ABA Std. 3.4)

§ 5-103. Informal inquiry.

(A) The commission, upon receiving a written complaint or request alleging facts indicating that a justice or judge is subject to discipline, removal, or retirement as provided in Neb. Rev. Stat. § 24-722, shall make an initial informal inquiry to determine whether a preliminary investigation should be conducted. The commission without receiving a written statement, and for good cause, may make such an informal inquiry or initiate an investigation on its own.

(B) Any complaint or request received by a commission member shall be forwarded to the chairperson or commission secretary for further action.

(C) The matter may be referred by the commission or the commission chairperson to a committee or one or more members of the commission, commission staff, or to a special investigator to conduct such informal inquiry as may be required, consider such evidence as deemed necessary, and report. The committee, staff person, or special investigator shall report whether it finds the complaint to be unfounded, frivolous, or whether it has substance requiring a preliminary investigation. The report shall be considered and passed upon by the commission. The chairperson shall have the discretion of presenting the report to the commission either

(1) at a regular meeting of the commission, or

(2) by furnishing a copy of the report to the commission members and polling them individually.

(D) Upon determination that there is insufficient cause to proceed, the complainant, if any, shall be notified. If the judge has been informed of the proceedings, he or she shall also be notified of its termination, and the file shall be closed.

§ 5-104. Preliminary investigation; closed formal hearing.

(A) If the commission determines that a preliminary investigation should be made, the same shall be conducted as provided by Neb. Rev. Stat. § 24-721.

(B) The chairperson may appoint a committee of commission members to conduct a preliminary investigation, and report.

(C) The commission, as a body, may conduct such preliminary investigation. The commission, acting as a body or by a committee of its members, may authorize the employment and use of a non-member investigator.

(D) The judge/justice shall be notified of the investigation, the nature of the complaint or request, and the name of the person making the written statement, if any, or that the investigation is being made on the committee's motion; and that he or she shall be afforded a reasonable opportunity in the course of the preliminary investigation to present such relevant matters as he or she may choose. At that time the judge/justice shall be furnished a copy of these rules.

(E) (1) The commission may take evidence before it or any individual member of the commission or its staff for the purpose of its preliminary investigation. Discovery proceedings may be had at the request of the respondent upon application made to the commission or master and good cause shown.

(2) A judge, clerk, court employee, member of the bar, or other officer of the court, shall comply with a reasonable request made by the commission for aid in its investigation of a judge or justice.

(F) The preliminary investigation shall be conducted without delay, and all progress, final, and supplemental reports shall be promptly filed with the secretary. All such reports shall be considered by the commission in formal session.

(G) If the commission finds that the reported preliminary investigation does not disclose sufficient statutory cause to warrant further investigation or proceedings, the judge/justice and the person, if any, filing the written complaint or request, shall be so notified in writing by the chairperson. Such formal action of the commission in dismissing a complaint or request does not necessarily adopt all the reasoning or conclusions of the investigative report.

(H) If the commission finds from the preliminary investigation that there is probable cause for the judge/justice to be subject to disciplinary action or retirement specified in Neb. Rev. Stat. § 24-722, it shall either:

(1) Reprimand the judge/justice after having held a formal closed hearing; such hearing is to be conducted in the same manner as is a formal open hearing except that the hearing shall be closed and all documents and reports arising out of the hearing shall be confidential, or

(2) Order a formal open hearing to be held concerning the reprimand, discipline, censure, suspension, removal, or retirement of such judge/justice.

(I) If the preliminary investigation does not disclose sufficient statutory cause to warrant further investigation or proceedings and the matter is dismissed under § 5-104(G) or if a reprimand is issued under § 5-104(H), the evidence on said complaint or complaints shall be considered the same as any other evidence in the event a subsequent formal hearing is held on a complaint concerning the reprimand, discipline, censure, suspension, removal or retirement of such judge/justice.

(J) If a reprimand is issued under § 5-104(H)(1) the commission shall issue a statement outlining the subject and nature of the complaint leading to the reprimand and the date and location of the hearing which was held prior to the issuance of the reprimand.

§ 5-105. Formal hearing.

(A) If after the preliminary investigation has been completed, the commission concludes that a formal hearing shall be held, the cause shall be entered in a docket to be kept for that purpose. The complaint shall be entitled: "Before the Commission on Judicial Qualifications, complaint against _____, judge, No. _____."

(B) A complaint shall be in a form similar to a complaint filed in a civil action in the district court. It shall be filed in the office of the Clerk of the Supreme Court, there to become a public record, and a copy shall be promptly served on the respondent, either by certified mail or personally. If the respondent cannot be found in the State of Nebraska, service may be had by leaving a copy at respondent's last known Nebraska address.

§ 5-106. Answer.

(A) Within fifteen (15) days after service of the complaint, the respondent shall file with the commission an answer. The answer shall be in form similar to an answer in a civil action in the district court. It shall contain a full and fair disclosure of all facts and circumstances pertaining to his or her alleged misconduct or physical or mental disability. Any willful concealment, misrepresentation, or failure to file such an answer and disclosure, shall be additional grounds for disciplinary action under the complaint.

(B) The complaint and answer shall constitute the only pleading.

§ 5-107. Setting for hearing and appointment of master.

(A) Upon the filing of a complaint, the commission shall set a time and place of hearing before itself and give notice of such hearing to the respondent at least twenty (20) days prior to the date set, or shall direct that such hearing be held before a master to be appointed by the Supreme Court.

(B) If the commission directs that the hearing be held before a master to be appointed by the Supreme Court, the commission shall file a written request to the Supreme Court to appoint a master for such purpose accompanied by a copy of the complaint. The Supreme Court shall within ten (10) days from receipt of said request, appoint a master to conduct such hearing. Said master shall set a time and place of hearing and shall give notice thereof to the respondent and to the Attorney General or special counsel at least twenty (20) days prior to the date set. The master shall rule on all motions and other procedural matters incident to the complaint, answer and hearing, subject to review by the commission after filing of the master's report.

§ 5-108. Hearing.

(A) At the time and place set for hearing, the commission, or the master when the hearing is before a master, shall proceed with a public hearing which as nearly as may be shall conform to the rules of procedure and evidence governing the trial of civil actions in the district courts, whether or not the respondent has filed an answer or appears at the hearing. The Attorney General or special counsel shall present the evidence in support of the charges set forth in the complaint. A respondent shall be entitled to be represented by counsel. Any employee, officer or agent of respondent's court, any law enforcement officer, any public officer or employee, and any attorney, who testifies as a witness in such hearing, whether called by the Attorney General or special counsel or by the respondent, shall be subject to cross-examination by either party in like manner as an opposite party under the rules of civil procedure.

(B) The failure of the respondent to answer or to appear at the hearing, shall not, standing alone, be taken as evidence of the truth of the facts alleged to constitute grounds for commission action. The failure of the respondent to answer, to testify in his own behalf, or to submit to a medical examination requested by the commission or the master, may be considered as an evidentiary fact, unless it appears that such failure was due to circumstances unrelated to the facts in issue at the hearing.

(C) The proceedings at the hearing shall be reported by a court reporter designated by the commission or master.

(D) When the hearing is before the commission, not less than a majority of the members shall be present while the hearing is in actual progress. Procedural and other interlocutory rulings shall be made by the

chairman, the acting chairman in the absence of the chairman, and any member designated by the chairman in the absence of both the chairman and the acting chairman, unless one or more calls for a vote, in which event, such rulings shall be made by a majority vote of those present.

§ 5-109. Issuance, service, and return of subpoenas.

At the request of the commission, the master, the Attorney General, special counsel, or counsel for respondent, subpoenas for the attendance of witnesses and the production of documents before the commission or master, shall be issued by the chairman and served by an individual or officer appointed for that purpose in the county in which the hearing is to be held in like manner and with like effect as in civil proceedings.

§ 5-110. Amendments or complaint or answer.

The master, at any time prior to the conclusion of the hearing, or the commission at any time prior to its determination, may allow or require amendments to the complaint or answer. The complaint may be amended to conform to the proofs or to set forth additional facts, whether occurring before or after the commencement of the hearing. In case such an amendment is made, the respondent shall be given reasonable time both to answer the amendment and to prepare and present his defense against the matters charged thereby.

§ 5-111. Report of master.

Within thirty (30) days after the conclusion of the hearing before a master, he or she shall promptly prepare and transmit to the commission in triplicate a report which shall contain a brief statement of the proceedings had and his or her findings of fact and conclusions of law with respect to the issue presented by the complaint and answer. The report shall be accompanied by three copies of the transcript of the proceedings before the master. Upon receiving such report and transcript, the commission shall promptly send a copy thereof to the respondent and the Attorney General or special counsel. The transcript of the proceedings before the master shall be filed. The master's report shall be received by the commission, but shall not be filed or made public until the filing of the commission decision, pursuant to § 5-115.

§ 5-112. Objections to report of master.

Within fifteen (15) days after mailing to respondent a copy of the master's report and transcript, the Attorney General, special counsel or respondent may file with the commission an original and ten (10) copies of a statement setting forth objections to the report of the master along with supporting briefs. A copy of any such statement and brief shall be served on the opposite party.

§ 5-113. Appearance before commission.

When the master files his report, the commission shall set a date for hearing any objections to the report. The respondent and the Attorney General or special counsel, shall file written briefs if any are filed at least five (5) days before the hearing date. The respondent and the Attorney General or special counsel may present oral arguments at the hearing.

§ 5-114. Extension of time.

The commission or its chairman may extend for periods not to exceed thirty (30) days the time for filing an answer, for the commencement of a hearing before the commission, for the filing of the report of a master, and for filing a statement of the objections to the report of a master, and a master may similarly extend the time for the commencement of a hearing before him or her.

§ 5-115. Commission decision.

(A) The affirmative vote of a majority of the members of the commission all of whom shall have considered the report of the master and objections thereto, and who were present at any oral hearing provided for in § 5-113, or if the hearing was before the commission without a master, the affirmative vote of a majority of the members of the commission, all of whom were present when the evidence was taken, is required for a recommendation for action, upon a finding that the charges are established by clear and convincing evidence. In the absence of such votes, an order of dismissal of the complaint shall be entered by the commission.

(B) The commission shall make written findings of fact and conclusions of law along with its recommendations for action thereon with respect to the issues of fact and law in the proceedings, but may instead, adopt the findings of the master, in whole or in part, by reference thereto.

(C) Upon consent of the respondent, an order of reprimand, discipline, suspension, retirement, or removal may be entered by the Supreme Court at any stage of the proceedings under these rules.

§ 5-116. Certification of commission recommendation to Supreme Court.

Upon making a determination, recommending action against a judge or justice, the commission shall promptly file a copy of the recommendation certified by the chairman, together with the transcript and the findings and conclusions with the Clerk of the Nebraska Supreme Court, who shall immediately send by registered mail to the judge or justice and to his counsel, notice of such filing, together with a copy of such recommendation, findings and conclusions.

§ 5-117. Review procedure in Supreme Court.

(A) Petition: Within twenty (20) days of the filing of the recommendation in the Supreme Court under § 5-116, the respondent may file with the Clerk of the Supreme Court a petition asking the Supreme Court to modify or reject the recommendation of the commission. The respondent shall file with the petition a certified copy of the recommendation or recommendations about which complaint is made. The petition shall be verified in seven (7) copies, shall be based on the record, shall specify the grounds relied on, and shall be accompanied by respondent's brief in seven (7) copies and proof of service of a copy of the petition and of the brief on the chairman of the commission. Within twenty (20) days after service on the commission, the commission shall serve and file a relator's brief. Within fifteen (15) days after service of such brief, the respondent may file a reply brief of which a copy shall be served on the chairman of the commission.

(B) Failure to file petition: Failure to file a petition within the time provided, may be deemed a consent to a determination on the merits based upon the record filed by the commission.

(C) Applicable rules: The Rules of the Supreme Court of Nebraska shall apply to the proceedings in the Supreme Court for review of a recommendation of the commission, except where express provision is made to the contrary or where the application of a particular rule would be clearly impracticable, inappropriate, or inconsistent.

§ 5-118. Decision by the Supreme Court.

The Supreme Court shall review the record of the proceedings on the law and facts and shall file a written opinion and judgment directing action as it deems just and proper, or reject or modify, in whole or in part, the recommendation of the commission.

§ 5-119. Fees and expenses.

The commission shall cause to be paid out of funds available for this purpose, all reasonable costs, fees, and expenses incurred in administering these rules. No cost shall be assessed against a judge or a justice who is exonerated. In cases where action is taken, costs shall be equitably assessed.

§ 5-120. Judicial retirement for disability.

(A) Voluntary Application: Any judge, or the guardian of any judge, who has become or is likely to become permanently, mentally or physically, disabled as provided in Neb. Rev. Stat. § 24-709, may file an application with the commission, furnishing such information as the commission may require, including, but not limited to, the furnishing of physician's statements, and such other evidence and proof of disability as the commission deems necessary.

The commission may require the judge to be examined by a physician selected by the commission at a time and place designated by the commission. If the commission determines that a judge is so permanently disabled, the commission shall notify the judge and the Public Employees Retirement Board and the judge shall be placed on retirement at a time designated by the commission and receive a retirement annuity as provided in Neb. Rev. Stat. §§ 24-709 and 24-710.

(B) On Motion of the Commission: The commission may, on its own motion, require a judge or the judge's guardian to furnish such information as the commission requires concerning the mental or physical condition of the judge, or require the judge to submit to a medical examination at a time and place as ordered by the commission under the provisions of Neb. Rev. Stat. § 24-722.

In cases where the commission institutes proceedings on its own motion, the procedures set forth in §§ 5-105 through 5-119 shall be followed, except where clearly impracticable, inappropriate, or inconsistent.

Upon an order for retirement by the commission, or by the Supreme Court when a commission order is reviewed by the court, the judge shall thereby be retired and the Public Employees Retirement Board promptly notified and the judge shall thereupon receive a retirement annuity the same as if the judge had been retired by application as above set forth.

§ 5-121. Confidentiality.

(A) All papers filed with and proceedings before the commission or masters appointed by the Supreme Court prior to a reprimand or formal hearing shall be confidential. However, the confidentiality of such papers and proceedings may be waived in writing by a judge or a former judge

(1) if the existence of the investigation or complaint has become publicly known, so that the results of the action of the commission can also be made public, or

(2) if the judge or former judge is an applicant for judicial office, so that the existence of any pending complaints can be made known to the appropriate judicial nominating commission.

(B) Even in the absence of such written waiver by a judge or former judge, the commission may immediately forward a copy of any complaint to such judge if the complainant makes a copy of such complaint public.

§ 5-122. Claims of discrimination.

When any matter is filed with the commission, any member of the commission, or the secretary of the commission in which an allegation is made that a judge has committed an act in violation of the Supreme Court's Workplace Harassment Policy, that allegation shall be brought to the attention of the commission chairperson or the commission secretary within two (2) working days. The commission chairperson or the commission secretary shall:

(A) Begin, or cause to begin, an investigation of the allegation(s) no later than ten (10) working days after the receipt of the complaint;

(B) Send notice of the allegation(s) along with a warning against retaliation to the judge against whom the allegation(s) have been made no later than ten (10) working days after receipt of the complaint;

(C) Notify the rest of the commission members of the allegation(s) within ten (10) working days; and

(D) The commission, investigators, and commission staff shall in all ways expedite processing of allegation(s) made concerning workplace harassment, and the cause shall be advanced for consideration and disposition as speedily as possible.

§ 5-123. Complaint; filing instructions; form.

(A) The following information is provided for your benefit in connection with the operation of the Judicial Qualifications Commission. This information does not comprise all of the laws with regard to the Nebraska Judicial Qualifications Commission and is intended simply to give you some general information. Should you have more specific questions with regard to the Judicial Qualifications Commission, you should contact: Commission Secretary, 1220 State Capitol, P.O. Box 98910, Lincoln, NE 68509; phone (402) 471-3730.

(B) Article V, Section 28, of the Nebraska Constitution provides for the creation of a Commission on Judicial Qualifications.

(C) Chairperson: Chief Justice of the Nebraska Supreme Court

(D) Article V, Section 30, of the Nebraska Constitution and Neb. Rev. Stat. § 24-722 specifically set out the grounds for which a judge may be reprimanded, disciplined, censured, suspended without pay for a definite period of time not to exceed six months, or removed from office. The grounds are the following:

- (1) willful misconduct in office,
- (2) willful disregard of or failure to perform his or her duties,
- (3) habitual intemperance,
- (4) conviction of a crime involving moral turpitude,
- (5) disbarment as a member of the legal profession licensed to practice law in the State of Nebraska, or
- (6) conduct prejudicial to the administration of justice that brings the judicial office into disrepute.

(E) The Commission is not authorized to review decisions made by a judge or to grant any form of relief arising out of a lawsuit except to the extent that the action of the judge in the case constitutes a violation of one of the grounds set out above.

(F) Upon receiving the complaint, the Commission is authorized to make such investigation as it deems appropriate under the circumstances and upon a finding of probable cause, may reprimand the judge or may order a formal hearing to be held before it concerning the reprimand, discipline, censure, suspension, removal, or retirement of such judge. After a formal hearing, the Commission must find that the charges are established by clear and convincing evidence. If it finds that such charges are established by clear and convincing evidence, it then recommends to the Supreme Court what action should be taken. The Supreme Court then reviews the record and makes such determination as it finds just and proper.

(G) All papers filed with and proceedings before the Commission, prior to any formal open hearing, are confidential and all testimony given before the Commission is deemed a privileged communication.

NO PARTICULAR FORM NEED BE USED WHEN FILING A COMPLAINT. THE ATTACHED FORM IS PROVIDED FOR YOUR CONVENIENCE. YOU NEED NOT FILL IT OUT IF YOU DESIRE NOT TO AND MAY MAKE COMPLAINT BY SIMPLY SENDING A HANDWRITTEN LETTER TO THE COMMISSION OR ANY MEMBER THEREOF.

NEBRASKA COMMISSION ON JUDICIAL QUALIFICATIONS

Complaint or Request Form

C O N F I D E N T I A L

TO: Commission on Judicial Qualifications

FROM: _____

DATE: _____

Please consider this form to be: (select one)

_____ A complaint against a judge of the State of Nebraska regarding his or her acts, activities, or qualifications.

_____ A request that the Commission consider the qualifications of a judge of the State of Nebraska.

1. Name of the Judge:

2. Name of Court:

3. City:

4. Date of incident:

5. Time of incident:

(If not a specific incident, dates and times of the activity that cause the complaint or request.)

6. Location of incident:

7. The information you provide in this statement should be based on facts and not on personal conjecture.

This complaint or request is being filed against Judge _____ because:

(Attach additional pages if necessary.)

8. Please list all known witnesses' names, addresses, and phone numbers:

(Attach additional pages if necessary.)

Dated this _____ day of _____, _____.

Signature

Type or Print Full Name

Street Address

City, State, Zip

Office Phone:

Home:

ANY OTHER PERSON DESIRING TO SIGN THIS COMPLAINT OR REQUEST SHOULD ATTACH A SIGNATURE BLOCK SIMILAR TO THE ABOVE FORMAT.

Please mail in an envelope marked CONFIDENTIAL to:

Commission on Judicial Qualifications
ATTN: Secretary
Nebraska Supreme Court
P.O. Box 98910
Lincoln, NE 68509

The Commission on Judicial Qualifications shall follow the provisions of Neb. Rev. Stat. §§ 24-715 through 24-728 in the disposition of this complaint or request.

11/14/2003